

GEORGE L. CRAMER

IBLA 93-86 Decided November 20, 1995

Appeals from separate decisions of the California State Office, Bureau of Land Management, denying extension of time for submitting final proof for and cancelling desert land entry. CACA 5902.

Set aside and remanded; reversed and remanded.

1. Desert Land Entry: Extension of Time

A decision rejecting an application for a second extension of time for the submission of final proof of a desert land entry will be set aside and the case remanded when the decision is based on the provisions of 43 U.S.C. § 333 (1988), rather than 43 U.S.C. § 334 (1988).

2. Rules of Practice: Appeals: Effect Of

The filing of a notice of appeal vests exclusive authority over the matter under appeal with the Board of Land Appeals, and BLM's authority is not restored until the Board takes action disposing of the appeal.

APPEARANCES: George L. Cramer, pro se.

OPINION BY ADMINISTRATIVE JUDGE IRWIN

George L. Cramer has appealed separate decisions of the California State Office, Bureau of Land Management (BLM), denying his request for an additional 1-year extension of time in which to file final proof for his desert land entry and cancelling that entry. BLM denied Cramer's request for a second extension of time by decision dated September 18, 1992, which Cramer timely appealed. BLM cancelled the entry by decision dated November 2, 1992, which Cramer also timely appealed.

Originally enacted in 1877, the Desert Land Act, 43 U.S.C. §§ 321-339 (1988), is one of the few settlement statutes that Congress did not repeal when it enacted the Federal Land Policy and Management Act of 1976, 43 U.S.C. § 1701 (1988). Section 1 of the Desert Land Act authorizes the Secretary to patent up to 320 acres of desert land per entry upon the submission of "satisfactory proof * * * of the reclamation" of the land,

including the cultivation of one-eighth of the land, and payment of the required fee. 43 U.S.C. § 321 (1988); see also 43 U.S.C. § 328 (1988). The final "proof" entitling the entryperson to a patent is required to be filed within 4 years after allowance of the entry. See 43 U.S.C. § 329 (1988); 43 CFR 2521.6(a).

Cramer filed his petition for classification and application for entry in 1979, having already arranged for financing through the Farmers Home Administration for an irrigation system, wells, sprinklers, and pumps. The record shows little action by BLM on Cramer's petition/ application until 1984 when his attorney prompted congressional inquiries. The record indicates that BLM had not acted because it was considering withdrawing the land for other disposition. Classification was further delayed by concerns over the economic feasibility of appellant's proposal attributable to alleged errors by the Soil Conservation Service concerning the cost of levelling the land and the need for soil amendments. Cramer's entry was not allowed until September 30, 1987, after the classification for entry was completed.

Meanwhile, Cramer and his wife divorced in 1987. Although they had arranged for joint custody of their young daughter, Cramer's former wife filed an action on April 12, 1989, in Lassen County, California, seeking modification of custody on the basis of allegations for which criminal proceedings were instituted against Cramer in Shasta County. Although the criminal proceedings were dismissed, the alleged criminal conduct by appellant remained a central issue in the custody proceedings. In September 1991 the Lassen County court found the "accusation to be not credible." In the Matter of the Marriage of Cristi Robin Cramer and George Leroy Cramer, No. 17827, slip op. at 3 (Cal. Super. Ct. of Lassen County, Sept. 5, 1991) (Order Modifying Visitation).

Because the September 30, 1991, due date for Cramer to file his final proof was approaching, he requested a 2-year extension. By decision dated September 11, 1991, BLM denied this request without prejudice for failure to comply with 43 CFR 2522.4 and 2522.6. BLM's September 11, 1991, decision recited that Cramer had applied for an extension under the Act of March 28, 1908, 43 U.S.C. § 333 (1988), and 43 CFR 2522.3, and stated that "[t]he regulations in 43 CFR 2522.4 require that the statement of facts presented by the entryman as to the reasons for the request for an extension must be corroborated by two witnesses * * * [and that] a request for an extension of time to submit final proof cannot be considered unless it is accompanied by the required \$10.00 service fee." See 43 CFR 2522.4(b), 2522.6.

Cramer promptly filed an amended request for a 2-year extension accompanied by two witness statements and a list of costs and lost income incurred between March 1989 and July 1991 that were related to his legal proceedings. On October 1, 1991, BLM issued a decision stating that the reasons given appeared to be adequate to justify an extension pursuant to

the Act of March 28, 1908, 43 U.S.C. § 333 (1988), but granting an extension for only 1 year. The decision stated that "[n]o further extensions of time beyond the one hereby granted should be contemplated by the entryman."

On September 17, 1992, Cramer filed another request for extension. He explained that the circumstances that were the subject of his prior request had delayed him 2 years and that another year would be required to complete his irrigation system. In its September 18, 1992, decision denying the extension, BLM said that Cramer had "again requested an extension of time for the same reasons given for the request in 1991." Referring to the provisions of the Act of March 28, 1908, 43 U.S.C. § 333 (1988), BLM stated:

The one year extension of time granted in October, 1991 was allowed by this office because of the personal and financial problems encountered by the entryman resulting from a legal battle. By his own admission and substantiating evidence showing that the legal battle had ended, the entryman may not use the same reasons to request an additional extension of time. No additional evidence in compliance with the requirements necessary for an extension of time has been submitted.

(Sept. 18, 1992, Decision at 2).

After Cramer filed his notice of appeal and statement of reasons for appealing the September 18, 1992, decision, BLM issued its November 2, 1992, decision cancelling Cramer's entry. In this decision BLM stated that it had denied his second request for an extension of time "because the reasons given for the request were the same reasons given by the entryman in 1991, and by the entryman's own evidence, these reasons were no longer valid" (Nov. 2, 1992, Decision at 1-2). A desert land entry is properly cancelled without a hearing where it is clear from the record that there is noncompliance with the desert land laws, BLM stated (Decision at 2).

[1] While it is true that once an entryman has been given any extension under 43 U.S.C. § 333 (1988), no further extension is available under that provision for any reason, Elaine S. Stickelman, 108 IBLA 392, 396 (1989), BLM erred in failing to adjudicate Cramer's second request for an extension pursuant to the Act of April 30, 1912, 43 U.S.C. § 334 (1988), which authorizes extensions of up to 3 years in addition to any extension granted under 43 U.S.C. § 333 (1988).

In Stickelman v. United States, 563 F.2d 413, 417 (9th Cir. 1977), rev'g Elaine S. Stickelman, 9 IBLA 327 (1973), the court described an entryperson's due process rights under 43 U.S.C. § 334 (1988):

As a minimum, entrypersons should be given an opportunity to read and reply in writing to any adverse field reports.

Moreover, the entryperson must have the opportunity to confront the authors, and also the opportunity to present contrary evidence. For the administrative appeal to the IBLA to be effective, the deciding officer must specifically find whether the entryperson meets the requirements of the first proviso in § 334. If the entryperson satisfies the first proviso, and the deciding officer refuses to grant the extension, the officer must explain the reason for this discretionary action. [1/]

In his September 1992 request for an extension, Cramer referred to his August 1991 letter that "detailed the circumstances which caused me to fall behind two years in my efforts to complete the DLE [desert land entry]" and enclosed a copy of that letter. That letter requested a 2-year extension and explained why he was "behind two years in [his] efforts." Because Cramer urged in 1991 that his reasons warranted a 2-year extension, we do not consider it accurate or fair for BLM to say in 1992, after granting him a 1-year extension in 1991, that by his own evidence these reasons were no longer valid. Nor, under these circumstances, can we agree that he could not use the same evidence in requesting a second extension.

As noted, BLM's September 18, 1992, decision refers to the provisions of the Act of March 28, 1908, 43 U.S.C. § 333 (1988). In accordance with Stickelman v. United States, *supra*, we set aside that decision so that BLM may decide on the basis of pertinent Departmental and judicial precedent whether Cramer meets the criteria of the first proviso of 43 U.S.C. § 334 (1988) and, if so, whether it will grant him an extension. We note the statement in BLM's decision that no additional evidence in compliance with the requirements necessary for an extension of time has been submitted. Although Cramer's September 1992 request might have been regarded as also incorporating by reference the two corroborating letters that were filed with his amended request in September 1991, given the passage of time while this appeal was pending, we believe Cramer should have the opportunity to submit a new request and the corroborating affidavit required by 43 U.S.C.

1/ 43 U.S.C. § 334 (1988) provides:

"The Secretary of the Interior may, in his discretion, in addition to the extension authorized by section 333 of this title or other law existing prior to April 30, 1912, grant to any entryman under the desert-land laws a further extension of the time within which he is required to make final proof: Provided, That such entryman shall, by his corroborated affidavit filed in the land office of the district where such land is located, show to the satisfaction of the Secretary that because of unavoidable delay in the construction of irrigation works intended to convey water to the land embraced in his entry he is, without fault on his part, unable to make proof of the reclamation and cultivation of said lands as required by law within the time limited therefor; but such extension shall not be granted for a period of more than three years * * *."

§ 334 (1988) so that BLM will have up-to-date information upon which to base its decision.

[2] Finally, BLM's November 2, 1992, decision cancelling Cramer's entry is reversed. After Cramer filed his appeal of BLM's September 18, 1992, decision, BLM no longer had jurisdiction over the matter. Petrol Resources Corp., 65 IBLA 104, 108 (1982). Even if it did have jurisdiction to issue this decision, we would set it aside because BLM failed to give the entryman 90 days after the denial of the extension in which to submit final proof. See Carol Carlton, 117 IBLA 13 (1990). Further, BLM failed to consider whether the entry should be cancelled only in part because the entryman had developed some of the land. See Anna R. Williams, 108 IBLA 88 (1989).

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, BLM's decision of September 18, 1992, is set aside and its decision of November 2, 1992, is reversed and the case is remanded for further action consistent with this opinion.

Will A. Irwin
Administrative Judge

I concur.

Bruce R. Harris
Deputy Chief Administrative Judge

